IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 1004 of 2005

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CHANDRIKABEN G. PANDYA - Applicant(s)

Versus

THE STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR DM AHUJA for then Applicant.
Ms. Nandini Joshi, Addl. PUBLIC PROSECUTOR for Respondent no.1.
MR PR NANAVATI for Respondent no.2.

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CORAM : HONOURABLE MR.JUSTICE DN PATEL

Date : 11/08/2006

ORAL ORDER

Rule. Learned additional Public Prosecutor Ms. Nandini Joshi waives service of Rule on behalf of respondent no.1 State. Learned advocate Mr. P.R.Nanavati waives service of notice of Rule on behalf of respondent no. 2.

2. The present Revision Application has been preferred against the order dated 15th December, 2005 in

Criminal case no. 1119 of 1997 passed by the learned Metropolitan Magistrate, Court no.11, Ahmedabad, whereby the trial court has closed the stage of giving evidence by the witnesses of the present applicant-accused and as defence witnesses have not been examined by the present applicant, the stage of examination of defence witnesses has been closed.

3. I have heard the learned advocate for the applicant who has submitted that criminal case no.1119 of 1997 has been filed against the present applicant for the offence punishable under section 138 of the Negotiable Instruments Act, 1881. It is alleged by the respondent no.2-original complainant that the applicant had issued two cheques i.e. Cheque no. 24021 dated 20th April, 1997 for Rs. 1,20,000/- and another cheque no. 25513 dated 30th April, 1997 for Rs. 25,000/-. Both these cheques were drawn on Co-operative Bank of Ahmedabad Ltd., Nava Vadaj branch, Ahmedabad. Both these cheques were deposited by the respondent no.2-complainant in Vijay Co-operative Bank Ltd., Shahibaug branch, but the cheques were dishonoured for want of sufficient funds on 6th August, 1997. Thereafter, a statutory notice as required under section 138 of the Negotiable Instruments Act was issued on 13th August, 1997. However, no reply was ever given by

the applicant. Thereafter, criminal case was filed and proceeded and thereafter, an application exh. 37 dated 14.11.2005 was given by the applicant for examination of witnesses. Two witnesses, one of them, namely Vinodkumar P Joshi was already examined, whereas witness Rajubhai Joshi could not be examined as summons was not served to him. Therefore, the applicant sought for time, but very short time was given and therefore, defence witness no.2 could not be examined by the applicant and instead of granting further time, stage of examination of defence witness has been closed by the trial court vide impugned order dated 15th December, 2005 and therefore, the order passed by the trial court deserves to be quashed and set aside and the applicant may be allowed to examine defence witness, namely Rajubhai Joshi, who is the employee of the applicant. The defence of the applicant is that the cheques in question were stolen and signatures have been forged by the original complainant and therefore, the examination of an employee of the applicant is necessary. This aspect of the matter has not been appreciated by the trial court and hence the impugned order passed by the trial court deserves to be quashed and set aside.

4. I have heard the learned advocate for the respondent no.2-original complainant who has submitted

that the complaint is of the year 1997. Thereafter, the applicant (original accused), instead of making payment, constantly, under one or the other pretext, filed different applications and getting orders from the trial court and is challenging before higher forums. Except giving applications, one by one and raising defences one by one, nothing much has been done by the applicant(original accused). Initially, an application exh. 13 was given on 9th December, 1999, whereby the applicant had prayed that the court should file a complaint under section 340 of the Code of Criminal Procedure against the original complainant i.e. present respondent no. 2. That application was rejected. Thereafter, application exh. 32 was given on 22nd December,2000 for getting the opinion of handwriting expert and thereafter, application dated 14.11.2006 exh. 36 as to carry out investigation by CID (Crime) of all the defences raised by the applicant which is also dismissed. Thus, every such type of application is a new defence and every order passed by the trial court has been made source for preferring appeals and Revision Applications. This is how criminal case no.1119 of 1997 has been prolonged by the applicant who is the accused. No reply of the statutory notice given under section 138 of the Negotiable Instruments Act, 1881 has been given by

the present applicant. All the defences like theft of cheques, opinion of handwriting expert because they were never signed by the present applicant, the plea of examination of defence witnesses are nothing but an afterthought. Initially application exh. 13 was given in the year 1999, again application exh. 32 was given in the year 2000 and thereafter application exh. 36 in the year 2005. Several times, criminal Revision Applications have been preferred in the Sessions Court against various orders passed by the learned Metropolitan Magistrate, Court no.11, Ahmedabad and matter have also come to this Court and therefore, ultimately, in Special Criminal Application no. 841 of 2003, a time bound schedule was given to the trial court for disposal of criminal case no.1119 of 1997. The said order was passed on 21st February, 2005 by this Court, whereby a direction was given to the trial court to dispose of criminal case preferably on or before 31st December, 2005. Thus, from February to December, 2005, time was given but looking to the nature of application exh. 36 given by the applicant at the fag end of the aforesaid time limit, that is on 14th November, 2005, that defence witnesses are to be examined by the applicant, from February 2005 to November, 2005, nothing was done by the applicant deliberately to cause delay so that criminal case may not

be finally disposed of within time bound schedule given by this Court and therefore, the order passed by the trial court is absolutely true and correct, legal and in consonance with facts of the case. No such application was given right from 1997. The complaint is filed in the year 1997. One of the defence witnesses, namely Vinodkumar P Joshi is already examined. Another defence whom the applicant wants to examine was an employee of the applicant. Despite he was an employee of the applicant, she has failed to bring him before the trial court and therefore, the court had rightly given some time and thereafter,closed stage of examination of defence witnesses and therefore, the order passed by the trial court may not be interfered with by this Court.

5. Having heard the learned counsel for both the sides and looking to the facts and circumstances of the case, in my view, the impugned order passed by the trial court is absolutely true, correct and in consonance with facts of the cases for the following facts and reasons:-

(i) Looking to the nature of the complaint which is of the year 1997, it appears that the present applicant is raising one by one pleas in her defence. Though statutory notice was given under section 138 of the Negotiable Instruments Act, as

cheques were dishonoured for want of sufficient funds, no reply was given by the present applicant. Initially, application exh. 13 was given on 9th December, 1999 and the trial Court was requested to take action under section 340 of the Code of Criminal Procedure. Though the present applicant was knowing that cheques have been stolen, the said complaint was never given by the applicant. Neither the said defence was ever raised by the applicant when the notice was given by the original complainant (respondent no.2). This application exh. 37 was dismissed by the learned Metropolitan Magistrate, Court no.11, Ahmedabad which order was further challenged by the applicant in Criminal Revision Application no. 172 of 2002 before City Sessions Court, Ahmedabad which was allowed by the City Sessions Court, against which the original complainant-respondent no. 2 preferred Special Criminal Application no. 841 of 2003 before this Court and the said Special Criminal Application has been finally disposed of by this Court by giving time bound schedule to the trial court for disposal of the criminal case. The order was passed on 21st February, 2005 and the trial court was directed to dispose of criminal case on or before 31st December,

2005. Thus, the time bound schedule given by this Court was known to the applicant. She waited till November, 2005 and gave an application exh.36 on 14th November, 2005 in the criminal case and gave names of two defence witnesses for examination. One was Vinodbhai P Joshi and another was Rajeshbhai Joshi. Though the said application was given at a very belated stage, the trial court entertained this application and issued summons and Vinodbhai Joshi was already examined as a defence witness. The summons to defence witness no.2 Rajubhai Joshi who was an employee of the applicant could not be served and therefore, time was sought for by the applicant. It was again granted by the trial court, but the applicant could not bring her employee as a defence witness. The court again granted one day's time. Again the applicant could not bring that defence witness before the court and therefore, rightly the trial court has closed the right of the applicant to examine defence witnesses. In view of the fact that criminal complaint is of the year 1997 and much time had elapsed after filing of the complaint. Over and above this, there was a direction given by this Court in Special Criminal Application No. 841 of 2003 vide order dated 21st

February, 2005 that the trial court has to finally decide the criminal case pending before it on or before 31st December, 2005. Keeping in mind these two factors, coupled with the fact that defences raised by the applicant one by one leisurely, which has caused much delay in the completion of the criminal complaint. Looking to the facts of the present case, the order passed by the trial court is absolutely true and correct.

(ii) It is also pointed out from the record of the case that initially exh. 13 dated 9.12.1999 was given by the applicant and it was requested that the trial court should take action under section 340 of the Code of Criminal Procedure. Thereafter, an application exh. 32 dated 22nd December, 2000 was given for hand writing expert's opinion and thereafter, an application exh. 36 dated 14.11.2005 was given for examination of defence witnesses. Thus, looking to the attitude of the present applicant, it appears that all these defences are raised one by one, initially in the year 1999 and thereafter, in the years 2000 and 2005 respectively, which has caused much delay in final disposal of the criminal case under section 138 of the Negotiable

Instruments Act. Enough is enough. From 1997 onwards, the case is going on in the trial court. No reply of the statutory notice issued by the respondent no.2-original complaint was ever given by the present applicant. Rightly therefore, the trial court has closed the stage of examination of defence witnesses.

(iii) Looking to the aforesaid nature of different types of applications with different types of defences, rightly it is concluded by the trial court that no further time should be given to such applicant and the matter ought to be finally argued out. During the course of the arguments, the learned advocate for the applicant also informed this Court that further application exhs. 40 and 44 have been given for adjournments and those applications have also been dismissed. Thereafter, for arguments, the matter was kept, but it was never argued out finally by the applicant and application exh. 45 was also given for adjournment for preparing the case for arguments. Some order has been passed below exh. 45 which is not challenged in this matter. Therefore, this Court is not much analysing the order dated 21st December, 2005 below application exh. 45 passed by the trial court. Looking to these types of

applications, one by one right from the year 1997 and various defences at much belated stage have been raised by the applicant and that too, without giving any reply to the statutory notice and keeping in mind time bound schedule given by this Court in Special Criminal Application no. 841 of 2003, I am of the opinion that the order dated 21st November, 2005 below application exh. 37 and the order dated 15th December, 2005 below application exh. 42 passed by the trial court are true and requires no interference by this Court.

6. In view of the above discussion, and as a cumulative effect of all the the aforesaid facts and reasons, there is no substance in this Criminal Revision Application. Hence, the same is hereby dismissed. Rule is discharged. Interim relief, if any, stands vacated.

(D.N.Patel,J)

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